

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM FARRELL, on his own behalf and
on behalf of all others similarly situated,

Plaintiff,

v.

OPENTABLE, INC., a Delaware corporation,
d/b/a OpenTable.com,

Defendant.

Case No. CV 11-1785 SI

~~[PROPOSED]~~ ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT AND CLASS
CERTIFICATION

On September 22, 2011, this Court heard plaintiff William Farrell's motion for preliminary approval of class settlement and conditional class certification under Rule 23(e) of the Federal Rules of Civil Procedure. This Court reviewed the motion, including the Settlement Agreement and Release ("Agreement" or "Settlement"). Based on this review and the findings below, the Court found good cause to grant the motion.

FINDINGS:

1. The Agreement is fair, reasonable, and adequate;
2. The Full Notice (attached to a stipulation filed by the parties on September 22, 2011) and Email Notice (attached to the Agreement) comply with due process because the notices and form are reasonably calculated to adequately apprise class members of (i) the pending

lawsuit, (ii) the proposed settlement, and (iii) their rights, including the right to either participate in the settlement, exclude themselves from the settlement, or object to the settlement;

3. The Settlement Class (defined below) is so numerous that joinder of all Class members is impracticable;

4. The claims of William Farrell (“Plaintiff”) are typical of the Class’ claims;

5. There are questions of law and fact common to the Class, which predominate over any questions affecting only individual Class members; and

6. Class certification is superior to other available methods for the fair and efficient adjudication of the controversy.

IT IS ORDERED THAT:

1. **Settlement Approval.** The Agreement, including the Full Notice and Email Notice in substantially the same form attached to a stipulation filed by the parties on September 22, 2011 and attached to the Agreement as Exhibit C, respectively, are preliminarily approved.

2. **Provision of Class Notice.** Defendant OpenTable, Inc. (“OpenTable” or “Defendant”) (collectively with Plaintiff, “Parties”) will notify Settlement Class members of the Settlement in the manner specified under Paragraph 3.3 of the Agreement and will pay all costs associated with class administration and providing notice to Settlement Class Members. No later than seven (7) calendar days before the filing date of Plaintiff’s application or motion in support of the Final Approval Order and Judgment, Defendant is to provide Plaintiff with a declaration or declarations confirming that the notice has been provided in accordance with paragraph 3.3 of the Agreement.

3. **Objection to Settlement.** Settlement Class members who have not submitted a timely written exclusion request pursuant to paragraph 5 below and who want to object to the fairness, reasonableness or adequacy of the Settlement Agreement or the proposed Settlement, or to the Fee Award, must deliver written objections to Class Counsel and OpenTable’s Counsel, and must file such objection with the Court, no later than forty-five (45) calendar days after notice starts being provided under paragraph 3.3 of the Agreement. The delivery date is deemed to be the date the objection is deposited in the U.S. Mail as evidenced by the postmark. Written

objections must be verified by a declaration under the penalty of perjury or a sworn affidavit and must include: (a) the name of the Action, “*Farrell v. OpenTable, Inc.*, N.D. Cal. Case No. C 11-01785”; (b) the full name, address, and telephone number of the person objecting; (c) a statement of each objection; and (d) a written brief detailing the specific reasons, if any, for each objection, including any legal and factual support the objector wishes to bring to the Court’s attention and any evidence the objector wishes to introduce in support of the objection(s). Any Settlement Class Member who files and serves a written objection, as described in this Paragraph, may appear at the Fairness Hearing, either in person or through personal counsel hired at the Settlement Class Member’s expense, to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the Fee Award. Settlement Class Members, or their attorneys, intending to make an appearance at the Fairness Hearing, however, must also deliver to Class Counsel and Defendants’ Counsel, and file with the Court, no later than forty-five (45) calendar days after notice starts being provided under paragraph 3.3, a Notice of Intention to Appear. Only Settlement Class Members who file and serve timely Notices of Intention to Appear may speak at the Fairness Hearing.

4. **Failure to Object to Settlement.** Settlement Class Members who fail to object to the Agreement in the manner specified above will: (a) be deemed to have waived their right to object to the Agreement; (b) be foreclosed from objecting (whether by a subsequent objection, intervention, appeal, or any other process) to the Agreement; and (c) not be entitled to speak at the Fairness Hearing.

5. **Requesting Exclusion.** Settlement Class members who want to be excluded from the Settlement must send a letter or postcard to the Settlement Administrator no later than forty-five (45) calendar days after notice starts being provided under paragraph 3.3 of the Agreement stating: (a) the name of the Action, “*Farrell v. OpenTable, Inc.*, N.D. Cal. Case No. C 11-01785”; (b) the full name, address, and telephone number of the person requesting exclusion; and (c) a statement that he/she does not wish to participate in the settlement. The delivery date is deemed to be the date the Exclusion Request is deposited in the U.S. Mail as evidenced by the postmark. No Exclusion Request will be valid unless all of the information above is included. OpenTable is

1 to provide the Plaintiff a list of Settlement Class members who have timely and validly excluded
 2 themselves from the Settlement Class no later than seven (7) calendar days before the filing date
 3 for Plaintiff's motion in support of the Fairness Hearing Order and Judgment.

4 6. **Conditional Certification.** The Class is conditionally certified as a class of all
 5 Persons residing in the United States of America who purchased a Spotlight Deal or otherwise
 6 received an OpenTable Ticket for a Spotlight Deal prior to the date of this Order.

7 7. **Appointment of Class Representative and Class Counsel.** Plaintiff William
 8 Farrell is conditionally certified as the Class Representatives to implement the Parties' Settlement
 9 in accordance with the Agreement. Edelson McGuire, LLC is conditionally appointed as Class
 10 Counsel. Plaintiff and Class Counsel must fairly and adequately protect the Settlement Class's
 11 interests.

12 8. **Termination.** If the Agreement terminates for any reason, the following will
 13 occur: (a) Class certification will be automatically vacated; (b) Plaintiff will revert to functioning
 14 as a putative class representative as if no class had been certified; and (c) this Action will revert to
 15 its previous status in all respects as it existed immediately before the Parties executed the
 16 Agreement. This Order will not waive or otherwise impact the Parties' rights or arguments.

17 9. **No Admissions.** Nothing in this Order is, or may be construed as, an admission or
 18 concession on any point of fact or law by or against any Party.

19 10. **Stay of Dates and Deadlines.** All discovery and pretrial proceedings and
 20 deadlines, including the deadline for OpenTable to respond to the Complaint, are stayed and
 21 suspended until further notice from the Court, except for such actions as are necessary to
 22 implement the Agreement and this Order.

23 11. **Fairness Hearing.** On January 20, 2012, at 9:00 a.m., this Court will hold a
 24 Fairness Hearing to determine whether the Agreement should be finally approved as fair,
 25 reasonable, and adequate. All supporting papers, except for papers regarding Class Counsel's
 26 petition for attorneys' fees and costs and Plaintiff's papers regarding any request for an incentive
 27 award, must be filed according to the briefing schedule set forth in Local Rules 7-2 and 7-3.
 28 Moving papers regarding Class Counsel's petition for attorneys' fees and costs and Plaintiff's

1 petition for an incentive award must be filed on or before thirty (30) days after notice starts being
2 provided to the Settlement Class under paragraph 3.3 of the Agreement. This Court may order
3 the Fairness Hearing to be postponed, adjourned, or continued. If that occurs, OpenTable will not
4 be required to provide additional notice to class members.

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6 DATED: 9/27/11


UNITED STATES DISTRICT COURT JUDGE

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